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## BOOK REVIEWS

TRUST ESTATES AS BUSINESS COMPANIES. By John H. Sears. Kansas City, Mo.: Vernon Law Book Co. 1921. pp. xx, 782.

This is the second edition of a work originally issued in 1912. The book is not a scholarly development of the law of trusts, or a general treatise on the subject, and the author disclaims any intention to make it such. It is not a book from which to learn what the law was at the time of Lord Coke, but a working volume for the practitioner, a handbook revised and enlarged to date.

It is of less value perhaps to the Massachusetts lawyer because in the decisions of the Massachusetts courts are found the leading cases on the subject of that form of business organization which, as a federal judge remarked, is "not uncommon in Massachusetts, and very uncommon elsewhere." In fact, in most of the few decisions in other states such organizations are referred to as Massachusetts Trusts. But it does supply, in part at least, a need which the profession generally will presumably feel with the more extensive adoption of the trust estate for business purposes. Its "superiority over corporate formation for legitimate business" Mr. Sears regards as self-evident.

Wrightington's *Unincorporated Associations* and an excellent chapter on Massachusetts Trusts in Fletcher's *Cyclopaedia of Private Corporations* afford at present almost the only source of information on the subject of the treatise. The gathering into one book of reference, therefore, of the cases which are found in the reports under divers headings and strange titles is alone sufficient justification for the publication of the volume, especially since it is fair to say that the kind of trust treated in the volume under review is becoming a subject of greater and greater importance in most jurisdictions.

The discussion is in a way elementary, as it is bound to be when the subject is one on which the ordinary practitioner has only an elementary knowledge. There is little attempt to theorize as to the further development of the law on the subject, or to consider the legal problems that may arise in connection with the operation of the trust form in business undertakings, it being regarded as sufficient for the purpose of the book to state carefully and comprehensively what has been developed in form and substance thus far, and what the courts have decided or had to say in connection with such development. To that extent it will serve the practitioner well.

The pitfall of partnership into which some of the earlier Massachusetts trusts fell is pointed out with a true appreciation of its importance, and the proper method of avoiding it is carefully derived from the decided cases.

The liability of the trust estate for torts of the trustee, which conceivably may become an important branch of the subject under increased utilization of this form of organization, is dismissed rather briefly, and may be said to receive rather less adequate treatment than any other phase of the subject.

The arrangement of the book is on the whole logical, beginning with the establishment of the trust, and proceeding with the nature of the creation, the status of the trustee and his rights, the liabilities of the trust estate, and the rights and liabilities of the beneficiaries, to such particular details as the relation of these trusts to perpetuities and restraints upon alienation, the practice and procedure in litigation, taxation, management by the trustees, and public policy with relation to such trust estates. The last two chapters are devoted to the discussion of specific stipulations in instruments establishing these trusts. There is an appendix containing such few statutes as have been passed with reference to business trust estates — and these are confined to Massachu-

setts and Oklahoma — and containing also exhibits of trust agreements actually in use in Massachusetts and elsewhere as well as forms of general provisions for such declarations of trust.

A complete table of cases cited and a fairly adequate index complete the volume.

The author is obviously a believer in this form of business organization, although he denies any intention either to recommend or to discourage the adoption of the trust estate form by any individual enterprise. His belief, however, in the efficiency of courts of equity to right most legal wrongs which arise in the conduct of business as compared with statutes to remedy grievances arising in the creation and conduct of corporations is plainly apparent, and he cites "the struggle by courts to bring corporate assets to the status of a trust fund" as one of the "finest tributes to an excellence in justice of the theory herein expounded that one might hope to find."

The book will presumably be not less cordially approved by the profession because it deprecates the avoidance of attorneys' fees or cheapness in organizations, and emphasizes that no one but a competent legal adviser, skilled in the laws of his state, can be relied upon to determine that a trust should be created, to draft the trust instrument properly, and to advise and instruct the trustees in the safe management of the trust estate.

J. COLBY BASSETT.

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LE GOUVERNEMENT DES JUGES ET LA LUTTE CONTRE LA LÉGISLATION SOCIALE AUX ÉTATS-UNIS. L'expérience Américaine du contrôle judiciaire de la constitutionnalité des lois. By Édouard Lambert. Paris: Marcel Giard & Co. 1921. pp. 276.

Professor Lambert of the University of Lyon presents under the above title a discriminating analysis of certain phases of judicial review of legislation in the federal and state governments of the United States. Recent judgments of the French courts, it is observed, are comparable with some of the landmarks establishing and developing judicial review in the United States,<sup>1</sup> and during the war it was not unusual in France for judicial interpretation and executive orders to disregard the legislative intent. These tendencies have culminated in a campaign in favor of the abrogation of articles 11 and 12 of the Law of August 5, 1790, title II, and the provision of the Constitution of September 3, 1791, title III, ch. 5, art. 3, to the effect that the courts ought not to interfere in the exercise of legislative power and are not privileged to suspend the execution of the laws. This campaign has resulted in the favorable consideration of a proposal introduced for a number of years in the French Chamber of Deputies to amend the present French constitution to establish judicial control over legislation along lines similar to the American system. The party supporting this proposal is now in the majority, and it seems to be, according to Mr. Lambert, only a matter of time when, either by amendment to the constitution or by judicial interpretation based on the former declarations of rights, French courts will adopt a type of judicial review modeled in part after that of the United States. Three phenomena are regarded as pointing in this direction: First, the sentiment prevalent among ministers to revert to the theory that it is the duty of the judiciary to protect the fundamental laws against sudden and radical changes; second, the tendency of the French Supreme Court to adopt very liberal methods of interpretation; third, the aspirations of jurists and of popular

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<sup>1</sup> For example, a judgment of a court in the district of the Seine is compared with a similar judgment in the case of *Godcharles v. Wigeman*, 113 Pa. St. 431.